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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. [redacted]63

HALLIBURTON OIL WELL CEMENTING COMPANY,
Petitioner and Appellant Below,

v.

DANIEL D. PAULK AND TEXAS EMPLOYERS' INSURANCE ASSOCIATION *(Appellees Below)* AND FRANCITAS GAS COMPANY *(Appellant Below), Respondents*

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals
For the Fifth Circuit

AND BRIEF IN SUPPORT THEREOF

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ROBERT O. BROWN,
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Houston, Texas

ALPHA LAW BRIEF CO., HOUSTON

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PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals For the Fifth Circuit

AND BRIEF IN SUPPORT THEREOF

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Halliburton Oil Well Cementing Company, a Delaware corporation, respectfully petitions this Honorable Court for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

Summary Statement of the Matter Involved

Respondent Paulk was engaged as a "roughneck" in the

reworking of an old gas well in Texas. As such, he was a member of what is known as the drilling crew. He was injured by the negligence of one Harvey, who was also engaged in work on the same well (Record, pp. 11-16). Harvey was in the general employ of Petitioner (Record, p. 214), and at the time of Paulk's injury was participating in the operation of testing under high pressure the result of an earlier operation which had been performed on the well, in the process of reconditioning it (Record, p. 221). The well belonged to Respondent Francitas Gas Company, which had one McDowell, its field superintendent, in charge of the reworking job (Record, pp. 198-200).

The particular operation in progress when Paulk was injured is known as a "squeeze job" (Record, pp. 199-200). It was but one of the numerous operations required in reworking the well. It necessitated the use of high pressures and therefore of equipment capable of producing them. To that end an instrument known as a "Yowell" tool had to be placed in the well. The Gas Company did not own such equipment and requested Petitioner to furnish it with a service man to deliver it and to assist the well owner in using it. The renting of this equipment and the furnishing of this man was pursuant to a written contract between the well owner and Petitioner which provided that the work should be done under the exclusive direction, control and supervision of the well owner (Record, p. 220; Appendix A to the Brief). The well owner's superintendent in charge of the work admitted at the trial that the contract was followed (Record, pp. 207, 211, 212).

The pressures needed were supplied by a cementing truck furnished also by Petitioner. These pressures were transmitted to the well through a manifold, the manual operation of which was in the hands of Harvey (Record, pp. 215, 222). Paulk's injury resulted from Harvey's permitting ex-

cess pressure to "bleed off" too rapidly from this manifold (Record, p. 273).

The jury found as a fact that Harvey had been loaned or hired to the Gas Company (Record, p. 366), and that when the injury occurred the equipment was being used exclusively in connection with and in furtherance of the business of the Gas Company (Record, p. 365), and not exclusively in connection with and in furtherance of the work of Petitioner (Record, p. 365). The jury also found, however, that Petitioner and the Gas Company were actually exercising joint control over Harvey (Record, p. 369). There was no finding that Petitioner had any *right* to control Harvey (Verdict; Record, pp. 365-369). Though urgently requested to do so by Petitioner, the trial court refused to instruct the jury that the *right to control* the details of Harvey's work determined who was his employer, and refused to allow the jury to find who had the right to control him in such details (Record, pp. 353-354, 361-363). The trial court adjudged Paulk's damages against Petitioner (Record, pp. 353-395.)

The Court of Appeals affirmed the trial court's judgment (Record, p. 415). The Court of Appeals held that as a matter of law (as distinguished from a question of fact) Harvey remained in the employ of Petitioner, and that Petitioner remained responsible for his negligence. In so doing, that court necessarily determined that the right to control Harvey in the details of his work was not the criterion, and that its immateriality rendered invalid Petitioner's defense that the right of control had passed to the Gas Company The Court of Appeals therefore held as harmless the trial court's refusal to consider as raising a fact issue the written contract and the testimony that it was followed, and also held as harmless the trial court's refusal of an instruction on or submission of such defense.

Jurisdictional Statement

This Court has jurisdiction because the Court of Appeals for the Fifth Circuit has decided an important question of local law in a way probably in conflict with the applicable local decisions (Supreme Court Rule 38, Paragraph 5(b)).

The Question Presented

Under the applicable Texas decisions, where a servant generally in the service of one master is temporarily loaned or hired to another, the special master becomes responsible for the torts of the loaned servant committed in the work of the special master, if the special master has the right to control the servant in the details of the work being done.

Likewise, under the applicable Texas decisions, in such a situation, a written contract between the general master and the special master vesting in the latter exclusive control, direction and supervision of the work of the servant—particularly when coupled with evidence that the terms of the written contract were followed—is, if not conclusive, at least sufficient evidence to raise a fact issue for jury determination on who had the right to control such details.

Reasons Relied Upon for the Allowance of the Writ

1. The question presented is an important question of local law because:

This court will take judicial notice that the production of oil and gas is an important American business, and that it is one of the chief industries of the State of Texas.

The drilling and reworking of oil and gas wells is not simply a matter of digging into the earth. There is usually involved a complicated series of operations, varying with conditions, but consisting of such things as cementing strings of casing put into the well, testing of formations, perforat-

ing the casing with shot, "squeezing" to cut off a particular formation which may have been abandoned, and the electrical logging of formations encountered. In the case at bar, it was necessary to shut off or "kill" the well by forcing into it mud under high pressure, to "squeeze" it by pressure-forcing cement into the formation, and finally to test it under pressure to be sure the well was free of leaks.

As here, the use of expensive and heavy equipment is necessary to do isolated but essential parts of the entire operation. Often such equipment is so expensive that it cannot economically be acquired and maintained by the well owner or drilling contractor. For the convenience of the industry, therefore, there are those who make a business of owning and furnishing such equipment, with men experienced in operating it. Normally, the well owner is unwilling to place his well, upon which he may have expended many thousands of dollars and may have overcome the hazards of drilling to great depths, under the control of such persons. By the same token, such furnishers of equipment, being without knowledge of the condition of the well or as to safety conditions prevailing, and with no possibility of control over other operations being done on the same well, cannot afford to assume the risk of liability for damage to the well itself or of injury to the many different workmen employed around the well.

It is the rule rather than the exception in arrangements of this sort for contracts to be made between the well owner and the furnisher of the equipment and men, by which the special equipment is rented to the well owner and there is vested in him the right to control the machines and their operators. In most instances, these contracts are written—although at times oral—and it is customary for them to contain provisions placing the lessee in full and exclusive con-

trol of the men. This includes control not only as to the work generally but as to its details.

Accidents in the use of such equipment do of course occur. It is therefore imperative in such situations that the lessor of the machine know his legal duties and liabilities in advance, so that he may properly calculate whether he will take the risk of permitting his machine and the men who operate it to be used in this hazardous work. It is necessary to the stability of the law that there be a uniformity rather than a conflict between the State decisions and the Federal decisions on a subject so important to those connected with one of Texas' largest industries. It is a question equally important to those who furnish the capital and to those who furnish the labor.

2. The decision of the Court of Appeals is in conflict with the applicable local decisions, in that:

The Texas authorities have consistently recognized the so-called loaned servant doctrine, and that the true test in determining responsibility for the torts of a special servant is to ascertain whose service is being performed by finding who has the right to control the servant in the details of his work. The Texas authorities further recognize that in making this determination as to the right of control, the contract between the general employer and the special employer treating with control is, in those instances where because of ambiguity not conclusive, at least enough evidence to raise a fact issue on the right of control. Cases with which the decision of the Court of Appeals is in conflict are:

> Holding that the loaned servant doctrine applies in Texas and that the test is the right to control the details of the work:

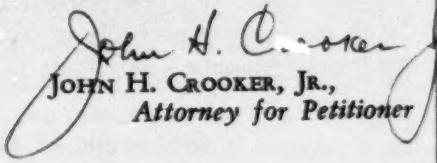
Rankin v. Nash-Texas Co. (Tex. Com. App.), 129 Texas 396, 105 S.W. (2d) 195;

Grandview v. Ingle (Tex. Civ. App.—writ dismissed), 90 S.W. (2d) 855;
Steele v. Wells (Tex. Civ. App.—writ ref.), 134 S.W. (2d) 377;
Magnolia Petroleum Co. v. Francis (Tex. Civ. App.—writ ref.), 169 S.W. (2d) 286.

Holding that a contract between the general employer and the special employer is relevant:

Steele v. Wells (Tex. Civ. App—writ ref.), 134 S.W. (2d) 377.

Respectfully submitted,



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BRIEF

The opinion of the trial court appears at pages 375-383 of the Record. Judgment of the Court of Appeals is reported at 180 Fed. (2d) 79.

Jurisdiction

Judgment was entered in this case by the United States Court of Appeals for the Fifth Circuit on February 16, 1950 (Record, p. 415).

Jurisdiction of this Court is invoked under Section 1254 (1), Title 28, UNITED STATES CODE. The Court of Appeals has in this case decided an important question of local law in a way probably in conflict with applicable local decisions (Supreme Court Rule 38(b)).

Statement of the Case

The statement in the petition for the writ is hereby adopted and made a part of this brief.

Specifications of Error

The Court of Appeals erred in holding that as a matter of law Petitioner was responsible in damages to Respondent Paulk for injuries received through the negligence of Petitioner's general servant, Harvey, who at the time of the injury was in the special employ of Respondent Francitas Gas Company.

It also erred in holding that the right to control Harvey in the details of his work was not the test of who was his master and therefore responsible for his torts.

It further erred in failing to hold that the written contract between Petitioner and Respondent Francitas Gas Company, when taken with the evidence of the superinten-

dent of Respondent Francitas Gas Company that such contract was actually followed, was at least some evidence that the right to control Harvey in the details of his employment was with Francitas Gas Company.

It also erred in approving the trial court's refusal to submit to the jury the issue of who had the right to control the negligent servant in the details of his work, thereby in effect depriving Petitioner of a jury trial.

ARGUMENT

Point I

The applicable Texas authorities hold that when a servant generally in the employ of one master is temporarily loaned or hired to a special master under an arrangement by which the special master has the right to control the servant in the details of his work, then the special master alone is responsible for the torts of the servant committed in the course of such special work. The Court of Appeals should have so held in this case.

As appears from the statement in the petition for the writ and as shown by the Record, Petitioner furnished a machine and a man generally in Petitioner's employ, to Respondent Francitas Gas Company, to do special work on the Gas Company's oil well (Record, p. 220). The man and the machine were furnished under a written contract, which appears as Appendix "A" to the brief (Record, p. 220). This contract vested in the Gas Company exclusive control, direction and supervision of the work to be done by the Gas Company with the man and the machine. At the trial, there was positive testimony that the terms of this contract were followed (Record, pp. 207, 211, 212). The

jury found that at the time Respondent Paulk was injured, the machine in question was being used exclusively in the work of the Gas Company (Record, p. 365). The jury also found that the negligent servant (Harvey), while in the general employ of Petitioner, had been loaned or hired to the Gas Company (Record, p. 366). The trial court refused to submit to the jury the question of who had the right to control Harvey in the details of his work (Record, pp. 353-354, 361-363.)

In spite of the evidence and the jury findings above mentioned, the trial court, apparently on the theory that who had the right to control was immaterial, held that Petitioner was responsible for the injury and entered judgment accordingly (Record, pp. 393-395). The Court of Appeals held that the contract and the evidence of the Gas Company's superintendent to the effect that the contract was followed, did not even raise a fact issue of Petitioner's non-liability, but that as a matter of law Petitioner remained liable for Harvey's negligence. This conclusion on the part of the Court of Appeals was based on the necessary holding that the right to control Harvey in the details of his work was immaterial and was not the test of Petitioner's liability. This, of course, amounts to an effectual repudiation of the so-called loaned servant or special employee doctrine as applied to a situation of the type here involved.

The Texas cases recognize the loaned servant doctrine:

Grandview v. Ingle (Tex. Civ. App.—writ dismissed), 90 S.W. (2d) 855;
Steele v. Wells (Tex. Civ. App.—writ ref.), 134 S.W. (2d) 377;
Magnolia Petroleum Company v. Francis (Tex. Civ. App.—writ ref.), 169 S.W. (2d) 286;
Rankin v. Nash-Texas Co., 129 Texas 396 (Tex. Com. App.), 105 S.W. (2d) 195.

The Texas cases just above cited hold that an employee in the general employment of one employer may be loaned or hired to another for special services, in the performance of which the employee may become the servant of the latter, with the legal consequences of that relationship, though he remains in the general employment of the original employer.

The Texas cases just cited further hold that in determining whether the general employer or the special employer is liable for damages resulting from a negligent act of such servant, the right to control the servant in the details of his work is the criterion.

The Texas authorities also hold that in determining who has the right to control the servant in the work, the contract under which the servant is working at the time is of utmost importance. See particularly STEELE v. WELLS (Tex. Civ. App.—writ ref.), 134 S.W. (2d) 377.

If the Court of Appeals had followed the applicable Texas authorities, it would necessarily have held either:

(a) That as a matter of law control of the details of Harvey's work had passed from Petitioner to the Gas Company, and that Petitioner was not responsible for his negligence; or

(b) That there was a fact issue as to who had the right to control Harvey in the details of his work, and that the trial court denied Petitioner of a submission of its defenses by refusing Petitioner's request to submit such issue to the jury. It is, of course, fundamental that refusal, after proper request to submit a defense raised by the evidence deprives a defendant of a jury trial on that issue.

Point II

The Court of Appeals, by its opinion, has created to the loaned servant doctrine as applied to this case an exception not warranted nor sanctioned by the Texas decisions.

It is so clear that the loaned servant doctrine is firmly entrenched in the common law of Texas and that under applicable Texas decisions the special master is liable for the negligent acts of the servant when he has the right to control the details of the servant's work, that we cannot attribute to the Court of Appeals the *intention* to repudiate or fail to follow the applicable holdings. In effect, however, the Court of Appeals has failed to follow them and has established a different rule of decision in the Federal Courts.

Apparently the refusal of the Court of Appeals to apply the test of the right of control in the instant case is because of its mistaken conclusion that the recent Texas case of INSUROR'S INDEMNITY & INSURANCE COMPANY v. PRIDGEN (Tex. Sup. Ct.), 223 S.W. (2d) 217 (not yet officially reported), creates an exception to the loaned servant doctrine in Texas, and that the instant case falls within that exception. In so concluding, we think the Court of Appeals has grievously misconstrued the PRIDGEN case.

The Court of Appeals has interpreted the PRIDGEN case to mean that as a matter of law in a special servant case there is a continuation of the general employment where there is furnished a machine of considerable value for a relatively short time, and the employee who operates it has specialized skill. The PRIDGEN case does not so hold. Under the particular facts of that case, the Texas Supreme Court found that there was no contract between the owner of the machine and the one to whom it was let, other than an agreement to be implied from circumstances; that the cir-

cumstances were undisputed; and that the only reasonable inference to be drawn from such undisputed circumstances was that the owner and general employer intended to and did actually retain control of the machine and the work of the men operating it.

As will be noted from a study of the PRIDGEN case, the Texas court was of the opinion that one could make no reasonable inference from the undisputed facts except that the general employer retained the right to control the details of the work, but that its holding would have been different had there been a showing that the right to control had passed to the special employer.

The other two Texas cases cited in support of its holding by the Court of Appeals are HERNDON v. HALLIBURTON OIL WELL CEMENTING COMPANY (Tex. Civ. App.), 154 S.W. (2d) 163, and HUMBLE OIL & REFINING COMPANY v. MARTIN (Tex. Sup. Ct.), 222 S.W. (2d) 995 (not yet officially reported). Neither case weakens or alters the Texas rule. So far as the point involved here is concerned, the HERNDON case holds simply that the contract there used—being ambiguous as to the right of control—did not preclude the jury from finding under the circumstances in evidence upon the fact issue involved that the right to control remained in the general employer. As here pertinent, the MARTIN case holds that the contract involved was as consistent with a master-servant relationship as with one between independent contractors, and that the provisions of the contract were not conclusive against the master-servant relationship, since there was other evidence tending to show that the alleged master retained the right to control the details of the work, and that the record was sufficient to support the fact finding below (216 S.W. (2d) 251, 255), that the relation of master and servant existed between the servant and the general employer.

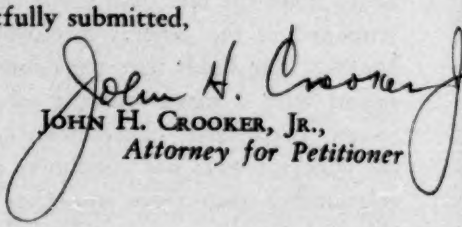
We respectfully submit that there is nothing in the PRIDGEN case nor any other case decided by the Texas courts in any manner impairing the well-recognized Texas rule that regardless of the value of the machine involved, the length of the special employment, the specialized skill of the employee, or any other evidentiary factor, the true test of liability is who has the right to control.

Conclusion

We respectfully submit that the question here involved is an important one. It is important not only to the litigants, but to the oil industry as a whole—to those who furnish the capital and the machinery used in it, and to those who labor in it and are exposed to its hazards.

The opinion of the Court of Appeals, if allowed to stand, will establish a rule of decision for the Federal Courts which is contrary to and out of harmony with the decisions of the State courts. It is obvious that upon a matter so important the rule of decision should be the same in both jurisdictions. We, therefore, respectfully pray this Court to grant the petition and examine the question.

Respectfully submitted,



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Appendix A

HALLIBURTON OIL WELL CEMENTING CO.

Halliburton-Yowell Cementer-Service Order and Ticket
DATE 10-7-45 PLACE Francitas, Tex

To HALLIBURTON OIL WELL CEMENTING COMPANY:

You are hereby requested to rent to
Francitas Gas Co.

a Halliburton-Yowell Cementer and furnish a service man to deliver the same to assist the owner or contractor to do the following work:

(Here follows a description of the well and a statement of the price to be charged, $176.00)

Conditions: It is expressly understood and agreed that the above described work shall be done under the exclusive control, direction and supervision of the owner or contractor.

As a part of the consideration for this agreement, it is expressly understood and agreed, that Halliburton Oil Well Cementing Company shall not be responsible for damages or losses of any kind whatsoever occasioned by or incident to the use of the above described cementer, whether run or operated by customer or by any one employed directly or indirectly by Halliburton Oil Well Cementing Company, or whether resulting from the acts or omissions of Halliburton Oil Well Cementing Company, or any of its agents, servants or employees in any way connected with or related to the use of such cementer.

It is expressly understood and agreed that Halliburton Oil Well Cementing Company shall not be bound by any agreement not contained herein, and no agent or representative connected with or employed by Halliburton Oil Well Ce-

menting Company has authority to alter or extend the terms of this agreement.

I have read and understand the terms of this agreement and represent that I am authorized to sign the same as agent of customer.

(This order to be signed before work is commenced.)

Company Francitas
By H. W. McDowell

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STATUTES

United States Code, Title 28, Section 1254(1) 1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No. 810

HALLIBURTON OIL WELL CEMENTING COMPANY,
Petitioner,

v.

DANIEL D. PAULK AND
TEXAS EMPLOYERS' INSURANCE ASSOCIATION,
Respondents

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Opinion Below

The opinion of the Court of Appeals (Fifth Circuit) is reported in 180 F. (2d) 79.

Jurisdiction

The judgment of the Court of Appeals was entered on February 16, 1950 (R. 415). The jurisdiction of this Court is sought to be invoked under Section 1254 (1), Title 28, UNITED STATES CODE.

Statement of the Case

The facts of the case are more fully and accurately stated in the opinion of the Court of Appeals than in the Petitioner's Brief.

Question Presented

Does the record contain substantial evidence supporting the determination that Petitioner was responsible in damages for injuries resulting from the negligence of Petitioner's employee in the operation of machinery under the joint control and direction of Petitioner and Francitas?

Argument

The Court of Appeals correctly applied the well-established Texas lent-servant rule to the fact issues properly submitted to the jury and determined adversely to Petitioner.

The fundamental fallacy of Petitioner's argument is that Petitioner has attributed to the Court of Appeals a holding which the Court did not make and which Petitioner *admits* (Petitioner's Brief, page 12) that the Court had no intention of making. It is *not* correct that the Court of Appeals held as a matter of law (as distinguished from a question of fact) that Harvey remained in the employ of Petitioner. Nor is it correct, as stated by Petitioner, that the Court of Appeals held that the right to control Harvey in the details of his work was not the criterion for determining who was his master.

The jury found that at the time of Petitioner's injury, the Halliburton equipment was being operated *under the control and direction* of Francitas and Halliburton; that Harvey,

in releasing the pressure into the hose which struck Paulk was acting as an *agent, servant or employee* of both Francitas and Halliburton, and that this was negligence which was a proximate cause of the injury to Paulk. (Italics added.)

It was not necessary for the Court of Appeals to determine as a matter of law the ultimate question as to Harvey's employment and who had the right to control him in the details of his work, and an intention to do so cannot be gathered from the opinion of the Court. The Court simply held that the evidence and findings of the jury, which necessarily involved the criterion of right to control as well as actual control, were sufficient under the well-established Texas law to establish responsibility upon Petitioner for the damages resulting from their employee's negligence.

The Court of Appeals, after carefully reviewing the evidence, found that the evidence was sufficient to prove the following:

1. Halliburton's crew placed the truck and equipment in such position and arrangement as they thought best and proceeded to the execution of the job to be done through the employment of Halliburton's specialized equipment, operated by the specialized Halliburton employees (R. 185, 196, 205).

2. The knowledge and skill of Halliburton crew members is not possessed by others not so specially trained, not even those skilled and experienced in oil well work in general (R. 294).

3. McDowell, Francitas' field superintendent, even though a skilled oil field man of many years, could not operate the equipment and had never been in charge or con-

trol of it on any of the jobs he had done in many years of work in oil fields (R. 186, 189).

4. McDowell's sole direction and control was to give the depth the tool was to be placed and pressure he wanted on the well (R. 211).

5. To accomplish the desired results, McDowell understood that the Halliburton men were supposed to do what he told them, but as to telling them how to do it, "Halliburton's men are supposed to be specialists on their job." (R. 207.)

6. McDowell "turned the job over to the Halliburton crew." (R. 211.)

7. Halliburton company rules do not permit anybody except Halliburton men to operate the Halliburton equipment (R. 294).

8. The Halliburton service is a highly specialized operation requiring expensive, specially made, and in some instances, patented equipment (R. 292, 293).

TABLE 6

In addition to the foregoing evidence, which is set forth in the opinion of the Court of Appeals, there was other proof that Harvey was in charge of the Halliburton men and equipment, that the Halliburton men worked under Harvey and took their instructions and orders from him, that Harvey was in full charge, supervision and control over the Halliburton men and equipment (R. 337, 338, 339), that McDowell did not know anything about operating the Halliburton equipment and had never been in charge or control of Halliburton equipment (R. 186, 189).

It can readily be seen that the Court of Appeals after considering the entire record has held that the question

submitted to the jury constituted a fair and adequate submission of the question of who had the right to control and direct the work of Harvey at the time of the accident, and that there was sufficient evidence to support the findings of the jury in that connection.

The Court of Appeals' decision is not in conflict with applicable local decisions. The loaned-servant doctrine is admittedly recognized in Texas, and in applying that doctrine the test in determining responsibility for the tortious act of a so-called "loaned-servant" is to ascertain who had the right to control the details of the loaned-servant's work at the time of the tortious act. Respondents do not say that these are not the rules. On the contrary, Respondents say they are the rules and that the rules have been properly applied in this case. The jury found that all of the Halliburton equipment was under the direction and control of both Halliburton and Francitas at the time of Paulk's injury and that Harvey at that time was acting as an agent, servant and employee of both Halliburton and Francitas. These findings mean that both Halliburton and Francitas, through Harvey, were controlling the details of the work being done by the Halliburton crew and with the Halliburton equipment when Paulk was injured and of necessity had, under the over-all circumstances, the *right* to do so. The findings could mean nothing else. The criterion of right of control was not ignored, although the Trial Court may have chosen not to submit the issue precisely as Petitioner requested it. It is the substance not mere form which controls here, and which impressed the Court of Appeals in upholding the judgment of the lower court.

The cases cited by Petitioner fail to support the Petitioner's contentions. They are cited as authority for the general rules which Respondent concede are applicable. In fact,

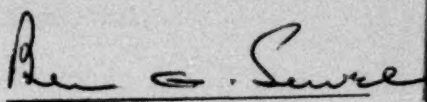
the one case cited by Petitioner in which the facts are identical with those in this case is HERNDON v. HALLIBURTON OIL WELL & CEMENTING COMPANY, 154 S.W. (2d) 163, and in that case judgment for the injured party against Halliburton based on a jury verdict was affirmed by a Texas Court of Civil Appeals, and the Supreme Court of Texas refused for want of merit an application for a writ of error. In the HERNDON case the Texas Court reviewed evidence strikingly similar to that in this case and held, as did the Court of Appeals, that the jury findings against Halliburton were supported by the evidence.

The fact that in this case the jury has found that Harvey and the Halliburton equipment were under the control and direction of both Halliburton and Francitas at the time of Harvey's negligent act does not differentiate the case from the HERNDON case for it is undoubtedly the Texas Law that an employee may be jointly employed by two employers in such fashion that both employers will be jointly and severally liable for the tortious acts of such employees. AMERICAN EXPRESS COMPANY, ET AL., v. CHANDLER, 231 S.W. 1085 (Tex. Com. App.), 1921—opinion adopted by Supreme Court; FOREMAN v. ARMOUR, 65 S.W. (2d) 334 (Tex. Civ. App.)—writ of error refused by Sup. Ct.

It is also equally clear that under the Texas decisions the written contract between Halliburton and Francitas is not binding on the Respondents, but on the contrary, the Respondents are entitled to show whether Halliburton actually surrendered control of the details of the job to Francitas or retained such control in whole or in part in its own experienced and highly trained operators. HUMBLE OIL & REFINING CO. v. MARTIN, 222 S.W. (2d) 995 (Tex. Sup. Ct., 1949). This the Respondents have done and the jury has made findings favorable to them on these questions.

Conclusion

The Petitioner's Application for Writ of Certiorari should be denied.



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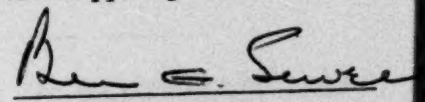
I hereby certify that copies of the foregoing brief of Respondents have been delivered to opposing counsel.



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